



**Rule(s) Review Checklist Addendum**  
(This form must be filled out electronically.)

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended subsequent to that review.**

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce.)**

Date last reviewed: **January 20, 1999**

Reviewer: **Alan R. Lynn**

Date current review completed: **April 30, 2004**

Briefly explain the subject matter of the document(s): **This rule explains the taxability of services performed in, or in connection with, interstate or foreign commerce. The rule primarily addresses services associated with the transportation of goods in interstate or foreign commerce.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>X</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
<b>X</b>		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
<b>X</b>		Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
<b>X</b>		Are there any interpretive or policy statements that should be repealed



		because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
X		Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is "yes" to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**The rule in part provides that "[i]n computing public utility tax, there may be deducted from gross income so much thereof as is derived from actually transporting persons or property or transmitting communications or electrical energy, from this state to another state or territory or to a foreign country and vice versa." Telephone services became retail sales in 1983 after WAC 458-20-193D was adopted. Thus, the reference to a deduction under the public utility tax for transmitting communications across Washington's borders should be removed from the rule. A reference to WAC 458-20-245, which addresses the taxation of telephone services, should be added.**

**Information from Det. 99-070, 22 WTD 144 (2003), which addresses the fact that services provided within a foreign trade zone are subject to the B&O tax, should be incorporated into the rule.**

**As mentioned above, the subject matter of this rule primarily deals with services associated with the transportation of goods in interstate or foreign commerce. The Department may want to consider whether to expand the scope of this rule to address/incorporate issues such as the following:**

- **The taxation of Internet services, since these services provide access to the Internet or a proprietary network that usually crosses state lines. [RCW 82.04.297 Internet services-Definitions.]**
- **Determination 99-243, 20 WTD 338 (2001), which explains that the service of monitoring out-of-state alarm signals from a location within Washington is subject to the B&O tax.**

**The reviewer makes the following recommendations for interpretive statements associated with Rule 193D. Ancillary document review supplements have been completed for each of these ETAs.**

- **ETA 280.04.193/194 (Commissions Earned on Interstate Sales) should be canceled.**



- **ETA 331.04.193 (The Applicability of the Interstate Commerce Exemption to Freight Forwarders) should be canceled.**
- **ETA 558.04.193 (Foreign Sales Corporations) should be amended.**

**3. Additional information:** Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**Statement #3 under "Examples of Exempt Income" provides "[i]ncome from services rendered by an out-of-state branch or office of the taxpayer regularly maintained outside the state is exempt. (See WAC 458-20-194.)" This is correct, but may be misleading. A taxpayer that does not maintain a physical place of business outside Washington is entitled to apportion service income when the out-of-state services performed are more than incidental.**

**4. Listing of documents reviewed:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- **RCW 82.04.310** "Exemptions-Public utilities-Electrical energy."
- **RCW 82.14.020** "Where retail sale occurs."

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

- **ETA 280.04.193/194 (Commissions earned on interstate sales)**
- **ETA 448.04.193 (Domestic International Sales Corporations)**
- **ETA 2006.16.179 (Taxability of air transportation and other activities performed with aircraft)**

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

- **Determination 89-525, 8 WTD 411 (1989) "Place of business" held to include the home of the Washington employee/shareholder of an out-of-state independent sales representative.**
- **Determination 90-163, 9 WTD 286-39 (1990) Separate accounting methods must accurately show the income attributable to activities engaged in Washington. Merely separating income by where the underlying transaction occurred does not constitute separate accounting methods when in-state activities contribute to the earning of the income.**



- **Determination 97-080, 16 WTD 220 (1997)** Freight forwarders that have common carrier liability for their customers' loss during shipping and that are contractually liable for the interstate transportation of goods qualify for the deduction of income derived from interstate commerce under RCW 82.16.050(8). ETB (ETA) 331 is limited accordingly.
- **Determination 97-074, 17 WTD 48 (1998)** A common carrier that transports household goods for at least part of the distance between an in-state and an out-of-state military base, pursuant to a through bill of lading, and who also temporarily stores such goods and/or provides other "accessorial" services related to such transportation, is exempt of public utility and B&O tax. The accessorial services are considered part of the exempt interstate transportation services.
- **Determination 98-206, 19 WTD 128 (2000)** Interstate movement into the state ends at the point where the obligation of the interstate line haul carrier ends. Transportation performed from that point to another point within Washington is wholly intrastate and is within the taxing jurisdiction of this state.
- **Determination 99-220, 19 WTD 355 (2000)** A taxpayer who is engaged in business only in Washington, who derives commission income from out-of-state sales by down-stream distributors in a multi-level marketing network by virtue of recruitment, training, and motivational activities performed entirely in Washington, may not apportion the commission income between Washington and other states where sales occur.
- **Determination 99-100, 19 WTD 440 (2000)** An out-of-state consulting firm that trains in-state trainers and confers upon them certain rights and responsibilities has established nexus in Washington by virtue of the training activities of the trainers.
- **Determination 99-330, 19 WTD 519 (2000)** In computing public utility tax, there may be deducted from gross income so much thereof as is derived from actually transporting property from another state to this state. The interstate movement of freight ceases when the goods have arrived at the destination to which they were billed by the out-of-state shipper. A motor carrier who moves goods entirely within the state of Washington must move them under authority of a through bill of lading in order to qualify for the deduction.
- **Determination 00-057, 19 WTD 986 (2000)** Revenue from transportation of bunker fuel, for consumption, to ship side on Washington tidewater or navigable tributaries, is not deductible under RCW 82.16.05(8). There is no forwarding of commodities to interstate or foreign destinations required by the statute.
- **Determination 01-121, 21 WTD 90 (2002)** Business consultant who conducts seminars and provides executive consulting services in Washington is taxable on such services.
- **Determination 01-188, 21 WTD 289 (2002)** Rule 194, rather than Rule 193, addresses the taxation of service-taxable income of a person doing business both inside and outside the state. Nexus examples in Rule 193 should not be relied upon to determine whether a taxpayer who engages in both sales activity and discrete service activity has sufficient nexus with a state for the state to tax its service income.

Attorney General Opinions (AGOs):



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Special Notice - Special Event Promoters and Vendors - New Requirements - Published July 1, 2003**
- **Special Notice - Addressed-based Database Now Available for Local Tax Coding for Mobile Telecommunication Services - Published September 10, 2002**
- **RCW 82.04.065. "Competitive telephone service," "network telephone service," "telephone service," "telephone business."**
- **RCW 82.04.290. Tax on international investment management services or other business or service activities.**
- **RCW 82.04.293. International investment management services - Definitions.**
- **RCW 82.04.297 Internet services-Definitions.**
- **RCW 82.04.530 Gross proceeds of sales calculation for telephone business.**
- **RCW 82.04.535 Gross proceeds of sales calculation for mobile telecommunications service provider.**
- **RCW 82.08.066 Deemed location for mobile telecommunications services.**
- **RCW 82.32.520 Sourcing of calls.**
- **RCW 82.08.0202 Retail sales of linen and uniform supply services.**

#### 5. Review Recommendation:

- X   **Amend**
- \_\_\_\_\_ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- \_\_\_\_\_ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- \_\_\_\_\_ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).



**The rule should be amended to correct and/or clarify the information it now contains as noted in section 2. In the alternative, the Department should consider whether there is a real need for this rule.**

**6. Manager action:** Date: April 30, 2004

AL Reviewed and accepted recommendation

Amendment priority (to be completed by manager):

     1  
     2  
  X   3  
     4